

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF AQUA FARMS, LLC FOR AN AQUACULTURE LEASE LOCATED EAST OF HOPE ISLAND, CUMBERLAND, CUMBERLAND COUNTY, MAINE)))))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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On December 7, 2004 Aqua Farms, LLC of Portland, Maine applied for an aquaculture lease totaling 2.0 acres in the coastal waters of the State of Maine, located east of Hope Island in Cumberland, Cumberland County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating blue mussels (Mytilus edulis) using suspended culture techniques. The application was accepted as complete on December 30, 2004. A public hearing on this application was held on December 1, 2005 at 2:00 p.m. on Chebeague Island. Intervenor status was granted to the Town of Cumberland, Ernest Burgess and Gordon Robinson.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that, taking into consideration the number and density of aquaculture leases in an area, the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area; significant wildlife habitat and marine habitat or the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna; or the public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will be in compliance with visual impact criteria adopted by the Commissioner relating to color, height, shape and mass.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the December 1, 2005 public hearing. At the public hearing, testimony was given by the applicant, Tollef Olson, the Department's Aquaculture Environmental Coordinator, Jon Lewis, Intervenor William Shane, representing the Town of Cumberland, Ernest Burgess and Gordon Robinson, and several members of the public.

Tollef Olson, part owner of Aqua Farms, testified on behalf of the applicant. According to the application and testimony by Mr. Olson, the proposed lease is sought to raise blue mussels on a lease site totaling 2.0 acres, for a lease term of ten (10) years. The proposed lease activities would consist of growing mussels on dropper ropes suspended from three 40' x 40' rafts. According to the application, a 41-foot barge equipped with a mussel de-clumper, grader and de-bysser is used for seeding and harvesting the site. The barge would be towed by a 27-foot Carolina Skiff or a 34-foot Webbers Cove fishing vessel. The barge is towed from site to site and may remain on the proposed lease site, but for no more than three weeks at a time. Seeding mussels on the site takes place in the spring and fall and consists of attaching mussel seed to the ropes on the barge and placing the ropes in the water. Harvesting takes place year-round according to market demand, which currently calls for two days per week. The rafts are inspected and serviced year-round two to seven days per week. The harvesting and seeding activities at the site are powered by muffled 24 Hp, 8 Hp and 4 Hp four-stroke engines. The applicant testified that the 24 Hp engine is used most frequently. Typically, the equipment is used for approximately 2-4 hours on a harvest day and 8 hours on a seeding day. The applicant testified that the noise produced by the 24 HP motor is equivalent to a lawn mower. The applicant does not plan to use lighting at the lease site other than required navigational lighting. The rafts would be made of natural wood with a gray metal frame. The barge is made

of natural wood, with an aluminum hull. All seed shellfish would be obtained from Tighrope Seafarms in Sedgwick, Maine.

In accordance with Department regulations, 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to this environmental characterization, the bottom of the proposed lease site consists of mud. Fauna observed during a SCUBA dive on September 4, 1999, includes sea sponge and scallops. Lobster burrows were also observed. According to the application, subsequent dives produced identical results. The depths are estimated to be between 60 and 70 feet. Currents are tidally driven and are estimated to be approximately one and one quarter knot.

According to the application, the proposed lease is located east of Hope Island and south of Rogues Rock, which is a natural impediment to transiting the area. There is very limited recreational traffic in the area. According to the applicant, some lobster fishing takes place on all sides of the proposed lease site and gear is occasionally placed within the proposed lease site. The applicant testified that fishing would be permitted in the open areas of the lease. He stated that he has two leases in Casco Bay where people fish successfully within the boundaries of the lease. According to the applicant, a person could fish for lobsters 20 feet from the rafts. He testified that the most traps he has observed at one time on his lease site located near Bangs Island is 30 traps. Of those 30 traps, 20 belonged to the applicant. The proposed lease site is not used for riparian access and no work will take place above the low water mark.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on September 28, 2005. During the site visit, a diver survey, utilizing an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit. According to the AEC's report, the proposed site is located 238 feet east of Hope Island and 551 feet south of Rogues Island. The proposed site has a very soft, flat mud bottom and is located in water depths ranging approximately from approximately 65 to 77 feet. No flora was observed in the area of the

proposed lease. Local fauna observed at the proposed lease site includes a common occurrence of sand shrimp, and an occasional lobster. Lobster burrows and wry-mouth eel burrows were also observed. According to the AEC's report, the proposed lease is not located within an Essential or Significant Wildlife Habitat.

According to the AEC, the proposed activities will not interfere with navigation or riparian ingress and egress. According to the AEC's report, no moorings or docks were observed within the area of the proposed lease site. According to the AEC, vessels transiting through the area of the proposed lease site are likely to give Rogues Island to the north of the site a wide berth, thus avoiding the proposed lease site as well. Approximately 2,485 feet of navigable water remains to the east of the proposed lease site.

According to the AEC's report, approximately 10 to 12 lobster buoys were observed within the boundaries of the proposed lease site during the site visit. The AEC noted that it was unknown whether the buoys represented single or multiple traps per buoy. Approximately 75 lobster trap buoys were observed to the east and west of the proposed site. The AEC stated in his report that the area obviously sees a substantial amount of lobstering activity. The AEC testified that the number of traps in the area is a better indicator of the presence of lobsters in the area than the number of burrows he observed during the dive. He also acknowledged that September 28th is not the time in which he would expect to observe the highest number of lobster traps in the area. The nearest aquaculture lease is the applicant's lease located off of Bang's Island which is located approximately 1.7 miles to the northeast of the proposed lease site. According to the AEC's report the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division.

Intervenor Ernest Burgess testified and provided written comments in opposition to the proposed lease. Mr. Burgess stated that the proposed lease area is a highly productive area for lobstering. According to Mr. Burgess, he fishes an average of 12 single traps in the proposed lease area. His overall catch rate is approximately 1 pound per trap July to November, erring on the conservative side. He testified that he has fished in the area for 35-40

years. According to Mr. Burgess, Chebeague Island fishermen cannot afford to lose any more fishing ground. He testified that the applicant's aquaculture lease located off of Bangs Island displaced many Chebeague fishermen, as well as the tanker and ferry boat routes. With regard to the Bangs Island lease site, he testified that he fishes single traps in the area of that lease, but stays at least 50 feet away from the rafts. Mr. Burgess testified that lobster fishing off of Hope Island is three times more valuable to him than fishing off of Bangs Island. According to Mr. Burgess, the proposed lease site is used by him and other area fishermen as a navigational route when going to or coming home from the southwest. They cut across the proposed lease site and traverse between Hope Island and Rogues Island.

Intervenor Gordon Robinson testified that he has placed lobster traps in the proposed lease area every year since 1968. He stated that he fished 10-trap stringers and that he places either one or two stringers in the proposed lease area every year. According to Mr. Robinson, approximately 30 different lobstermen fish in the proposed lease area throughout the year. He testified that the proposed lease area east of Hope Island is one of only a few areas left that is entirely Chebeague Island fishing territory. With regard to the Bangs Island lease, Mr. Robinson testified that he used to fish in the lease area, but can no longer do so because he fished stringers. He stated that anyone who fishes stringers cannot fish in the Bang's Island lease area. Mr. Robinson testified that the proposed lease area is more heavily fished than the Bangs Island lease area was before the lease was granted. Additionally, he testified that he also uses the proposed lease area as a navigation route.

Cumberland Town Manager William Shane, provided testimony on behalf of Intervenor Town of Cumberland. He testified that on November 28, 2005, the town council voted to oppose the proposed lease application. He submitted a petition signed by 56 Chebeague Island residents asking the town to oppose the lease. According to Mr. Shane, there are approximately 500 to 1,000 lobster traps in the proposed lease area in one season. Mr. Shane also testified that that proposed lease site would interfere with navigation.

The owner of Hope and Rogues Islands, John Cacoulidis, provided testimony and written comments objecting to the proposed lease. He testified that the noise from the proposed lease would impact the numerous birds on the island. Mr. Cacoulidis stated that the proposed lease site would unreasonably interfere with lobster fishing and navigation. He stated that his wife has a valid lobster license and fishes in the proposed lease area. According to Mr. Cacoulidis, he has been a resident of Hope Island for 12 years and can attest that the area of the proposed lease is a prime spot for lobstering. Additionally, Mr. Cacoulidis stated that permanent moorings in the area of the proposed lease are required for his use of the island.

Six additional lobstermen testified in opposition to the proposed lease. They all testified that they have fished in the proposed lease area for many years, referring to the proposed lease area as a favorite spot, excellent, and plastered with traps. Five of the six lobstermen testified that they used to fish in the Bangs Island lease site, but they no longer fish there. In addition to the 8 lobstermen that testified, at least 10 other Chebeague Island lobstermen attending the public hearing according to the hearing attendance list.

A mussel farmer who works with the applicant provided testimony regarding the proposed lease. He stated that navigation is an issue, but that vessels can go around the rafts. He testified that mussel farming is an environmentally benign activity.

In addition, two letters were submitted in support of the proposed lease; one general letter of support and one from a customer of the applicant's in the food service industry.

Findings of Fact

The proposed lease site is located 238 feet east of Hope Island and 551 feet south of Rogues Island in water depths ranging approximately from 65 to 77 feet. The proposed lease area is one of a few areas fished exclusively by Chebeague Island fishermen. At least 18 Chebeague Island lobster fishermen attended the public hearing and 8 fishermen testified in opposition to the proposed lease. The proposed lease area is a highly productive area for lobstering. During the Department's site visit on September 28, 2005, approximately 10 to 12 lobster buoys were observed within the boundaries of the proposed lease site during the site

visit, likely representing more than one trap per buoy. Approximately 75 lobster trap buoys were observed to the east and west of the proposed site. Approximately 30 lobstermen fish in the proposed lease area and some have fished there for many years. One fisherman fishes an average of 12 single traps in the proposed lease area and his overall catch rate is approximately 1 pound per trap July to November. Another fisherman fishes one or two ten trap stringers in the proposed lease area every year and has done so since 1968.

One of the applicant's existing leases is located off of Bangs Island which is located approximately 1.7 miles to the northeast of the proposed lease site, an area formerly fished by Chebeague Island fishermen and now fished by a few Chebeague fishermen with single traps. At least six lobstermen used to fish the Bangs Island lease area, but no longer fish there. The one fisherman who testified that he still fishes the Bangs Island area stays at least 50 feet from the rafts and only fishes single traps. The proposed lease area is more heavily fished and more valuable to the fishermen than the Bangs Island lease area. Taking into consideration the presence of an existing lease within the Chebeague fishing area, the presence of three 40' x 40' mussel rafts, along with the necessary moorings, and a 41-foot barge within this productive lobster area would unreasonably interfere with lobster fishing. Therefore, based on the above evidence, I find that the proposed lease will unreasonably interfere with lobster fishing.

Conclusions of Law

Based on the above findings, taking into consideration the number and density of aquaculture leases in the area, I conclude that the aquaculture activities proposed for this site will unreasonably interfere with lobster fishing in the area.

Accordingly, the evidence in the record does not support a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the application for an aquaculture lease of 2.0 acres located east of Hope Island in Cumberland is denied.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources